IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2799 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MN CHAWDA & ANR.
Versus
U.O.I. THROUGH GENERAL MANAGER,

Appearance:
MR SUNIT S SHAH for Petitioners No. 1-2
MR MG NAGARKAR for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

#. Rule. Learned counsel Mr.M.G.Nagarkar waives service of Rule on behalf of respondents. By consent of the parties, the matter is finally heard and disposed of by this order.

#. By this petition under Article 227 of the Constitution of India, the petitioners have challenged the order of the Central Administrative Tribunal dated 12.3.2001 in Original Application No.332 of 2000 whereby the application for setting aside the transfer orders of the petitioners was rejected.

#. The original transfer orders of the petitioners were assailed by petitioners on several grounds. There is no dispute about the fact that the petitioners were serving as Deputy Station Superintendents and under the policy of the respondents to periodically transfer the officers holding sensitive posts, the impugned orders of transfer were issued. The main contention of the petitioners that the Deputy Station Superintendents are not holding any sensitive post which were covered by periodical transfer policy of the respondents was not accepted by the Tribunal on the ground that the list of sensitive posts included the post of Station Superintendent and the pay scale and duties of the Station Superintendent being at par with that of Deputy Station Superintendent, the petitioners were also holding sensitive posts. It was then urged that when exhaustive list of sensitive posts was provided under the policy itself, it was neither for the transferring authority nor for the Court to decide whether the posts held by the petitioners were sensitive or not.

#. It is admitted on behalf of the respondents in the affidavit filed before the Tribunal that the petitioners' designation was not mentioned or described in the instructions of the Railway Board for the purpose of periodical transfer. It was however contended that the post of even lower cadre like Assistant Station Master was covered under the periodical transfer policy and as such, the post of Deputy Station Superintendent will automatically come under the purview of the said policy.

This reasoning advanced by respondents and upheld by the Tribunal could not commend itself to us as such equations would come in the way of uniform implementation

of the said policy. It was open for the Railway Board to include designation of Deputy Station Superintendent in the list of sensitive post susceptible to periodical transfer. That having not been done, the transfer of the petitioners on the basis of the aforesaid policy and on the ground of their having held sensitive post cannot be upheld. We would however make it clear at this stage that we are not inclined to uphold the transfer orders only under the aforesaid policy and on the ground of the petitioners holding sensitive post. If they are otherwise liable for transfer, it would be open for the authority to issue necessary orders for their transfer.

#. On the grounds and for the reasons stated hereinabove, we allow this petition and set aside the orders of transfer dated 23.3.2000 issued by respondent No.2 and also set aside the impugned order of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, dated 12.2.2001. Rule is made absolute to the aforesaid extent with no order as to costs.

(D.M.Dharmadhikari, C.J.)

(D.H.Waghela, J.)

(sunil)